No. 275

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

LEON O. MANZANILLO
Petitioner

vs.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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Leon O. Manzanillo, by his counsel, prays that a writ of certiorari be issued to review the judgment of the United States Court of Claims dismissing the petition in the above-entitled cause, entered February 15, 1957.

OPINIONS BELOW

The action of the Court of Claims is based upon its Opinion in *Eleaterio Logronio v. The United States*, reported in 133 F. Supp. 395, which reversed its opinion in *Victorio v. United States*, reported in 106 F. Supp. 182, which superseded its opinion in *Victorio v. United States*, 91 F. Supp. 748.

JURISDICTION

The right to sue in the United States Court of Claims is found in sections 1491 and 2502 of the Judicial Code; Tit. 28 USCA, 1491, 2502.

The judgment of the United States Court of Claims was entered on February 15, 1957. Application to the said Court for a Transcript of the Record was filed.

STATUTES—PRESIDENTIAL MILITARY ORDERS AND PROCLAMATIONS—MILITARY ORDERS

The Statutes, the Presidential Military Orders and Proclamations, and the Military Orders involved will be found in Appendices A to C.

STATEMENT

The facts are as follows:

(1) Petitioner is of legal age, a citizen and resident of the Philippine Republic, with residence and postal address at 135 Easter Road, Baguio City, Philippines.

(2) Under the laws of the Republic of the Philippines, citizens of the United States can bring suits in the Courts

of the Philippines against the Republic of the Philippines on express or implied contracts.

3) Pursuant to authority of the Philippine Independence Act (March 24, 1934), 48 Stat. 456, and Sec. 2(a)(12) of the Ordinance appended to the Philippine Constitution, the Philippine Army was called and ordered into the service of the armed forces of the United States by Military Order of the Commander-in-Chief, President Franklin D. Roosevelt, dated 26 July 1941, and was integrated therein by general orders of the Commanding General of the United States Army Forces for the Far East, known in short as "USAFFE." (App. B & C)

(4) After the fall of Bataan and Corregidor, in 1942, elements of USAFFE refused to surrender to the military forces of the Imperial Japanese Government, which Government was then the enemy of the United States of America, (which we hereinafter refer to as the Enemy) and fled to the hills where they banded and organized themselves into guerrilla units and continued to wage military operations against the Enemy in accordance with the express or implied authority of the Commander-in-Chief of the United States Army Forces Southwest Pacific Area, (USA-SPA) having sworn allegiance to the United States of America, until the liberation of the Philippines from the military control of the Enemy by the armed forces of the United States of America.

(5) Among the guerrilla units organized was the so-called Cushing Guerrillas, known as the Cushing Regiment, which unit, effective April 1942, was an authorized unit in the Philippine Army in the service of the United States Forces in the Philippines (App. F). USFIP

operating on the Island of Luzon, Philippines. This unit was one of the more aggressive of all the guerrilla units organized and operated in the Philippines and continuously conducted military operations against the Enemy, in accordance with the implied and express authority of the Commander-in-Chief of the United States Army Forces, Southwest Pacific area, its leaders and all members of the organization having sworn allegiance to the United States of America.

(6) In order successfully to prosecute military operations against the Enemy and in accordance with the Rules of Land Warfare published by the United States War Department and/or in accordance with the express or implied authority of the Commander-in-Chief of the United States Army Forces Southwest Pacific Area the aforesaid guerrilla unit, through its authorized officers, requisitioned, commandeered and otherwise legally procured money, food supplies, equipment, goods and merchandise from various persons.

(7) Petitioner, at various times, from July 1943 to October 1944, delivered to the aforesaid guerrilla unit, upon the request of Colonel Isidoro Aberin (P.A.), USFIP, commanding, cash loans in Philippine and Japanese currency for the purpose of securing arms, food and supplies essential to the continued operation in the field of the Cushing Guerrilla Unit, amounting to a total of Pesos 883,451, or $416,725.50 in United States currency.

(8) At the time the cash items were paid by Petitioner to the Commanding Officer of the Cushing Guerrillas, corresponding receipts were issued to the Petitioner, App. G and App. H. It was clearly understood and

agreed at the time of such commandeering that a legal obligation to repay was created thereby and that payment would be made by the United States Army, of which the Cushing Guerrilla Unit was an authorized element.

(9) Pursuant to the decision of the Supreme Court of the United States in the case of *Soriano v. United States* No. 49, Oct. Term 1956, decided Jan. 14, 1957, 352 U. S. 270, it is conceded by the petitioner that the first four currency loans in the claim filed with the Court of Claims are barred by the rule of the statute of limitations, laid down by the Supreme Court in its decision in the *Soriano* case, but the two remaining items of claim, involving pesos 295,000.00, clearly were timely filed with the Court of Claims.

(10) Petitioner has received no payment of the above described two loans, and is justly entitled to the sum of $147,500.00, together with an allowance for interest thereon.

(11) Under date of March 30, 1948 Petitioner filed a claim for reimbursement of the amounts in question with the Commanding General, PHILRYCOM, APO 707, Mandaluyong, Rizal, Philippines, Attention: Chief, Procurement Claims Section. Under date of August 10, 1949, Petitioner was advised in a communication from Headquarters, Adjutant General Records Depository, Philippines Command, United States Army, signed by James C. Billings, 1st Lt., Infantry, Adjutant, that the claim had been disallowed, sent to the closed files, and that further correspondence would serve no useful purpose. No explanation was given. It is understood that in the records of the Adjutant General Records Depository, as aforesaid, the claim bears the number H-1-03509.

(12) There has been no assignment or transfer of this claim or any part thereof. There are no credits or set-offs thereto.

(13) The petitioner did not at any time or in any way voluntarily aid or give encouragement to the enemies of the United States and at the time the commandeerings were made the petitioner owed and bore true allegiance to the United States. At the present time, petitioner owes allegiance to the Republic of the Philippines.

(14) Petitioner filed a petition in the United States Court of Claims on May 5, 1950.

(15) The United States Court of Claims, upon defendant's motion to dismiss, dismissed petitioner's petition on February 15, 1957. By order signed by Chief Justice Warren on May 10, 1957, petitioner was granted an extension of time to file petition for writ of certiorari to July 15, 1957.

(16) The claim in the *Logronio* case was barred in whole by the statute of limitations and, in addition, was barred in part by the finality provisions of the Missing Persons Act, which the Government had argued—"But instead of deciding this simple case on those simple grounds, the case is made the vehicle for overruling our former decision in the case of *Isidro Victorio v. United States*, 122 C. Cls. 708, 106 F. Supp. 182). That decision was arrived at unanimously, after normal deliberation. We have not been asked to over-rule it. I think that decision was right and I cannot concur in the part of the instant opinion which over-rules it." (Dissent of Judge Madden, concurring in the result)

SPECIFICATION OF ERRORS TO BE URGED

The United States Court of Claims erred:

(1) In dismissing that portion of petitioner's claim which clearly was timely filed, in accord with the decision of the Supreme Court in the *Soriano* case, decided January 14, 1957.

(2) In failing to hold that the Philippine Army and the organized Philippine guerrillas called into the service of the armed forces of the United States, who answered that call, and who were recognized as elements of USAFFE, were part of the armed forces of the United States, so that their requisitions created a debt of the United States for which the United States is liable.

REASONS FOR GRANTING THE WRIT

I. The Decision of the Court of Claims is in Conflict with Decisions of other Federal Courts Involving the Basic Question as to Whether Recognized Filipino Guerrilla Units were Part of the Armed Forces of the United States.

The Court of Claims, in *Eleuterio Logronio v. United States*, 133 F. Supp. 395, and upon which the dismissal of the petition in the subject case is based, held that the units of the Philippine Army "called into the service of the armed forces of the United States" by the Commander-in-Chief did not thereby become a part of the Army of the United States. Thus, the Filipino guerrilla units which were organized upon surrender of the United States forces in the Philippines, and which were recognized by the Commander-in-Chief of the United States Army, South Pacific area, in 1945, as "authorized elements of the United States Army forces in the Far East,"

were not a part of the Army of the United States. Therefore, the requisitions during 1942-1945 by their officers, who had sworn allegiance to the United States, and who promised that the United States Army would pay, did not create a debt of the United States for which the United States is liable.

The Court of Claims was not called upon to rule on this question, but did so on its own motion, though not necessary to its decision.

This decision is in conflict with the decision in *Petition of Agustin*, 62 F. Supp. 832, and with the *dictum* of the Court of Appeals for the First Circuit, in *United States v. Peter You Lo Ghen*, 170 F. (2d) 307, which unqualifiedly approves of the decision of the District Court in the *Agustin* case.

In the *Agustin* case, the Court had before it Section 701 of the Nationality Act of 1940, as amended, the benefit of the provisions of which is restricted to a person "who has served or hereafter serves honorably in the military or naval forces of the United States" during World War II. (App. A)

Agustin organized the Yay Regiment, Fil-Americans, a guerrilla band—after our surrender—and fought the Enemy. Upon General MacArthur's return to the Philippines, the Yay Regiment, Fil-Americans was recognized as an authorized element of the United States Army Forces in the Far East by the Commander-in-Chief, United States Army, South Pacific Area.

Upon the basis of these facts, the Court held that Agustin had served honorably in the military forces of the

United States during World War II and was entitled to citizenship, the highest honor we can bestow.

The facts respecting the Yay Regiment, Fil-Americans, are the same as those respecting the Cushing Guerrillas in the Island of Luzon, except as to locale.

Both guerrilla units were similarly organized and similarly recognized by the United States Army. They naturally could not be recognized by the Philippine Army but only by the United States Army, as part of it.

Had the question been there presented, the Court would have had to hold that requisitions of supplies by Agustin created a debt of the United States for which the United States is liable.

In the case of *Peter Yon Lo Chan*, *supra*, the Court of Appeals, referring to the Agustin case and after reviewing the activities of the Yay Regiment and its formal recognition by the United States Army as an authorized element of the United States Army Forces in the Far East, said:

> "The Court properly held that the informality of the circumstances of Augustin's enlistment did not obscure the fact of his honorable and distinguished service as commanding officer of a recognized element of the United States Army, and that petitioner was entitled to be admitted to citizenship."

While a conflict cannot arise on the question of liability of the United States for requisitions of guerrillas, as only the Court of Claims can have jurisdiction, it seems clear that there does exist a conflict on the fundamental question as to whether the recognized guerrillas

were a part of the Army of the United States—a question which this Court should resolve; it is the crux of the ultimate question of liability of the United States.

II. The Questions Involved are of a Substantial National Importance.

General Carlos P. Romulo, Filipino Ambassador to the United States and one of the most distinguished Filipino leaders of this century, in response to certain questions propounded to him by the late Prew Savoy, Esq., Counsel for the petitioner in the *Soriano* case, *supra*, set forth his views in part as follows with respect to the procurement claims imbroglio (Appendix D):

"(1) What did the Filipino soldier think when the President of the United States, as Commander-in-Chief, ordered the Philippine Army into the service of the Armed forces of the United States?

"But there is a legal bond between us that serves to complement the moral and emotional bond. Our troops fought, not only as Filipino soldiers but as soldiers of the Army of the United States, as American nationals fighting in defense of the American flag on soil over which the United States had full sovereignty. When they fought, were wounded, were killed, they were Filipinos, yes, but they were also American nationals."

* * * * * *

"When the Philippine Army was called into the service of the Armed Forces of the United States by Military Order of the President of the United States and received its orders from General MacArthur, every single soldier—while defending his native soil—felt that he was

defending the American flag—the United States of America—as well as did any soldier from the mainland."

(2) What did the supplier of the guerrillas think when his property was requisitioned?

"The suppliers believed and, in my opinion, had every right to believe, that they were supplying guerrilla units of the American Army in defense of the United States and would be paid by the United States Army."

(3) Is the subject question of importance to the United States?

"These people strongly feel, rightly or wrongly, that they have suffered an injustice at the hands of the United States Army. They feel that they supplied the United States Army, were promised payment, and that the United States Army left the Philippines without giving them a full opportunity to present their claims and without paying its obligations. Among them, their friends and families, which are indeed numerous, this cannot help but create an ill feeling toward the United States which we all hope can be avoided. There are bound to be enough problems between our two countries without having one so based.

"They feel that the Court of Claims has done them a wrong because their claims have never been heard on the merits. They cannot believe that these were not debts of the United States and they hope that your Supreme Court will decide otherwise.

"Even if they now must turn to their Government for assistance and there, by reason of agreement between the two Governments are eventually repaid, they will feel that the United States Army and its Courts did not meet

their responsibility. The elements which from time to time will seek to estrange Filipinos from the United States should not be augmented by disillusioning and embittering those who so loyally came to the assistance of the Guerrilla units of the United States Army. For this reason, I consider the matter of national importance and possibly of eventual international importance to the United States."

We do know as Americans that the Philippines constitute an important bastion in any defense against Russia from the West, if only as part of the three prong defense Japan-Guam-Philippines.

It is respectfully urged that the question as to whether the recognized Filipino guerrillas were part of the Army of the United States so that their requisitions created a debt of the United States for which it is liable is of national importance.

III. The Case Involves a Novel and Important Question of Interpreting Two Acts of Congress and Presidential Orders Issued Pursuant Thereto Not Heretofore Passed Upon by This Court.

In Section (1) of the Act of June 3, 1916, (App. A) Congress has defined the Army of the United States to include the Regular Army, the Volunteer Army, the Officers' Reserve Corps, the Enlisted Reserve Corps, the National Guard while in the service of the United States, and persons inducted into the land forces of the United States.

By Act of January 26, 1918, (App. A); Congress went further and provided as follows:

"The militia and other locally created armed forces

in the Philippine Islands *may be called into the service of the United States, and all members thereof could be drafted into said service* and organized in such manner as is or may be provided by law for calling or drafting the *National Guard* into said service, and shall in all respects while therein be upon the same footing with members of the National Guard so called or drafted; * * *." (Italics supplied.)

This Act was never repealed but went out of existence in 1946 with the coming into being of the Independence of the Philippines.

President Woodrow Wilson, in 1918, issued the following Proclamation under that Act. (App. B).

* * * * * *

"Now, therefore, I, Woodrow Wilson, President of the United States of America, by authority of the powers conferred upon me by said Acts of Congress, do hereby *call into the military service of the United States to serve therein for the period of one month*, unless sooner discharged, as of and from the twentieth day of November, one thousand nine hundred and eighteen, *the members of one Infantry Division of the Philippine Guard, as organized under the Tables of Organization of the United States Army*. * * *." (Italics supplied.)

Thus, under the 1918 Act and the Proclamation of President Wilson, the unit of the Philippine Army so called into the military service of the United States in 1918 was part of the "Army of the United States," even though it was not so under the definition of "Army of the United States" in the Act of 1916.

Without repealing this Act or referring to it, Congress provided in Section 2(a)(12) of the Philippine Independence Act of 1934 (App. A), as follows:

> "The Philippine Islands recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and *armed forces* in the Philippines, and, upon order of the President, to call into the service of *such armed forces* all military forces organized by the Philippine Government." (Italics supplied.)

President Franklin Roosevelt issued the following Military Order on July 26, 1941, under that Act and the corresponding provisions of the Ordinance appended to the Constitution of the Commonwealth of the Philippines:

> "Under and by virtue of the authority vested in me by the Constitution of the United States, by section 2(a)(12) of the Philippine Independence Act of March 24, 1934 (48 Stat. 456), and by the corresponding provision of the Ordinance appended to the Constitution of the Commonwealth of the Philippines, and as Commander-in-Chief of the Army and Navy of the United States, I hereby call and order *into the service of the armed forces of the United States* for the period of the existing emergency, and place under the command of a General Officer, United States Army, to be designated by the Secretary of War from time to time, *all of the organized military forces of the Government of the Commonwealth of the Philippines*: * * *" (Italics supplied.)

December 18, 1941, General MacArthur then issued

General Orders 46, implementing that Military Order, providing:

> "1. Pursuant to provisions of the Proclamation of the President of the United States, dated July 26, 1941, all personnel of the Philippine Army on active duty and all active units of the Philippine Army, *less personnel and units already accepted for service with the United States Army Forces*, are hereby called *into the service of the armed forces of the United States* in the Philippines, effective on the date of acceptance for the period of the existing emergency, *and will be accepted for such service of officers in the service of the United States Army Forces in the Philippines.*
>
> "2. Personnel of the Philippine Army which may hereafter be called to active duty and units thereof which may hereafter be activated are hereby called into the service of the armed forces of the United States in the Philippines, effective on the date of acceptance, *and will be accepted for such service by officers in the service of the United States Army Forces* in the Philippines." (Italics supplied.)

On June 29, 1946, the organized military forces of the Commonwealth of the Philippines were released "from the services of the Armed Forces of the United States" by Military Order of the Commander-in-Chief of the Army and Navy, President Harry S. Truman, five days before the independence of the Philippines. (App. B).

Thus, if the unit of the Army of the Philippines was in the Army of the United States in 1918, it seems clear that the organized military forces of the Philippines called into the service of the armed forces of the United

States on July 26, 1941, and released from such service on June 29, 1946, were part of the Army of the United States during that period.

The Court of Claims says that the organized military forces of the Philippines called into the service of the armed forces of the United States, in 1941, and the guerrillas recognized as elements of USAFFE in 1945, were not a part of the United States Army.

The Court of Claims, in its now controlling decision, seeks to draw a distinction between the Act of 1918 and that of 1934 and the Military Orders issued pursuant thereto—to differentiate between the power to order the Philippine Army into the service of the United States Army and the power to order complete units of the Philippine Army into the service of the United States Army, or, in the alternative, to draft individual members into such service—as determining the question as to whether or not the person is in the Army.

The reasoning of the Court is fantastic—for in either case, whether as part of the Philippine Army, or of a unit thereof, or individually called, the person—the Filipino—is, in all events, under the military orders of the Commander-in-Chief of the United States Army, or an area commander. He is in the Army.

The two Acts in question, the Military Orders issued under them, and the legal consequences which flowed therefrom in the Philippines in World War II, have never been considered by this Court, and the opinion of the Court of Claims respecting them is so utterly wrong that it should certainly be reviewed.

Subsequent methods of payment, limitations of rights

under G. I. legislation, provided by Congress, have nothing to do with the question.

IV. Failure to Take Jurisdiction and Render a Decision Upon the Merits Amounts to a Taking of Property Without Due Process of Law, Contrary to the Constitution.

The decision of the Court of Claims in effect deprives of any legal remedy citizens of a friendly foreign government whose property was appropriated and used by the United States Army in time of war in contravention of the Constitution.

(1) The Army has and had every right and power to requisition petitioner's property in the all-out war.

(2) Petitioner had and has every right to just compensation therefor upon an implied contract, or under the guarantees of the Fifth Amendment to the Constitution of the United States.

(3) Petitioner must first have demanded payment of the Army and have had payment refused before the claim accrued and before he could sue in the Court of Claims.

(4) The Army Claims Service was set up to receive such demands for payment and determine the claims for payment on their merits. (App. E)

(5) Petitioner was given an opportunity to demand payment, demanded payment of the Army before the Claims Service established for that purpose, and payment was refused.

(6) Part of Petitioner's original suit was timely filed in the Court of Claims.

The Fifth Amendment is available to aliens as well

as to citizens of the United States. They cannot be deprived of their property without due process of law.

The ascertainment of due process is a judicial function. (*Monongahela Nav. Co.* v. *United States*, 148 U.S. 312; *Seaboard Air Line R. Co.* v. *United States*, 261 U.S. 299; *Brooks-Scanlon Corp.* v. *United States*, 265 U.S. 106; *Richmond Screw Anchor Co.* v. *United States*, 275 U.S. 331.)

The Court of Claims shirked its duty in not hearing this case on merits.

One asks:

May the Army procure and use in the Philippines supplies and materials, vitally needed in the national defense during a total war, and then close the courts to a hearing on the merits on a pure technicality—because the Guerrillas were not drafted and did not enlist in the United States Army, on a decision of the Court of Claims—when that Court has vacillated in its own decisions and when even its members are not in agreement?

This principle involved in the clear negative answer is, in substance, recognized by the Supreme Court in the case of the *Russian Volunteer Fleet* v. *United States*, 282 U.S. 481, reversing 68 C. Cls. (1928) 28, on Motion of the Government that the Court of Claims was without jurisdiction under the Judicial Code, sec. 155 (now 28 U.S.C.A. 2502).

In its opinion, by Mr. Chief Justice Hughes, the Court said that—

> * * *. The Provision that private property shall not be taken for public use without just compensation establishes a standard for our Government

> which the Constitution does not make dependent upon the standards of any other governments. The act of Congress should be interpreted in the light of its manifest purpose to give effect to the constitutional guarantee." (282 U.S. 481, 492.)

To fail to allow claimants to have their claim considered on its merits would, to paraphrase the words of the Chief Justice, (282 U.S. 481, 488), mean that "although the United States has actually taken possession of the property and was enjoying the advantages of its use" in the national defense of the country, and the alien owner was unquestionably entitled to compensation at the time of the taking, had it been practical then to determine its value, it was the intention of our Government that recovery should be denied, or at least be indefinitely postponed until the Congress made some provision for the determination of the amount payable other than through the Court of Claims.

The Court, in the *Agustin* case, *supra*, refused to apply the technical construction which such a conclusion requires.

This Court cannot possibly admit of such a conclusion.

CONCLUSION

For the foregoing reasons, and for the guidance of all parties concerned in future times of stress or of war, it is respectfully submitted that this petition for a *writ of certiorari* should be granted.

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Counsel for Petitioner.

July 15, 1957.

APPENDIX A

Act of June 3, 1916, c. 134, Sec. 1, 39 Stat. 166, 10 USCA 5, Sec. 2:

§ 2. Composition of Army of United States. The Army of the United States shall consist of the Regular Army, the National Guard while in the service of the United States, and the Organized Reserves, including the Officers' Reserve Corps and the Enlisted Reserve Corps. (June 4, 1920, c. 227, subchapter I, § 1, 41 Stat. 759.)

Act of January 26, 1918; 40 Stat. 432; 32 USC 84.

CHAP. 11.—An Act To authorize the calling into the service of the United States the militia and other locally created armed forces in the Philippine Islands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the militia and other locally created armed forces in the Philippine Islands may be called into the service of the United States, and all members thereof may be drafted into said service and organized in such manner as is or may be provided by law for calling or drafting the National Guard into said service, and shall in all respects while therein be upon the same footing with members of the National Guard so called or drafted: *Provided*, That the pay and allowances of officers and men of the Philippine Militia and other locally created armed forces in the Philippine Islands called into the service of the United States under the provisions of this Act when serving in the Philippine Islands shall in no case exceed the pay and allowances for corresponding grades of Philippine Scouts.

Approved, January 26, 1918.

Philippine Independence Act, March 24, 1934. 48 Stat. 456.

[CHAPTER 84.]

AN ACT

To provide for the complete independence of the Philippine Islands, to provide for the adoption of a constitution and a form of government for the Philippine Islands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

CONVENTION TO FRAME CONSTITUTION FOR PHILIPPINE ISLANDS

SECTION 1. The Philippine Legislature is hereby authorized to provide for the election of delegates to a constitutional convention, which shall meet in the hall of the house of representatives in the capital of the Philippine Islands, at such time as the Philippine Legislature may fix, but not later than October 1, 1934, to formulate and draft a constitution for the government of the Commonwealth of the Philippine Islands, subject to the conditions and qualifications prescribed in this Act, which shall exercise jurisdiction over all the territory ceded to the United States by the treaty of peace concluded between the United States and Spain on the 10th day of December 1898, the boundaries of which are set forth in article III of said treaty, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on the 7th day of November 1900. The Philippine Legislature shall provide for the necessary expenses of such convention.

CHARACTER OF CONSTITUTION—MANDATORY PROVISIONS

SEC. 2. (a) The constitution formulated and drafted

shall be republican in form, shall contain a bill of rights, and shall, either as a part thereof or in an ordinance appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands—

(1) All citizens of the Philippine Islands shall owe allegiance to the United States.

(2) Every officer of the government of the Commonwealth of the Philippine Islands shall, before entering upon the discharge of his duties, take and subscribe an oath of office, declaring, among other things, that he recognizes and accepts the supreme authority of and will maintain true faith and allegiance to the United States.

* * * * * *

(6) The public debt of the Philippine Islands and its subordinate branches shall not exceed limits now or hereafter fixed by the Congress of the United States; and no loans shall be contracted in foreign countries without the approval of the President of the United States.

* * * * *

(10) Foreign affairs shall be under the direct supervision and control of the United States.

* * * * * *

(12) The Philippine Islands recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President, to call into the service of such armed forces all military forces organized by the Philippine government.

(13) The decisions of the courts of the Commonwealth of the Philippine Islands shall be subject to review by

the Supreme Court of the United States as provided in paragraph (6) of section 7.

* * * * * *

IMMIGRATION AFTER INDEPENDENCE

SEC. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the Immigration laws of the United States (including all the provision thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

Approved, March 24, 1934.

Constitution of the Philippine Commonwealth

The Constitution of the Philippine Commonwealth adopted February 8, 1935, provided, in article VII, section 11 (2):

> The President [of the Commonwealth] shall be Commander-in-Chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out armed forces to prevent or suppress violence, invasion, insurrection, or rebellion. * * *

The Ordinance appended to the Constitution provided:

> Section 1. Notwithstanding the provisions of the foregoing Constitution, pending the final and complete withdrawal of the sovereignty of the United States over the Philippines,

* * * * * *

(12) The Philippines recognizes the right of the United States * * * upon order of the President of the United

States, *to call into the service of such armed forces* all military forces organized by the Government of the Commonwealth of the Philippines. [Italics supplied.]

Title X—Naturalization of Persons Serving in the Armed Forces of the United States During the Present War.

Sec. 610. Amendment of Nationality Act of 1940

The Act of October 14, 1940 (54 Stat. 1137; U.S.C., 1940 ed., sections 501-907 of Title 8), entitled "An Act to revise and codify the nationality laws of the United States into a comprehensive nationality code," is hereby amended by adding thereto a new title (sections 1001-1006) of Title 8) as follows:

"Title III

"Sec. 701. Notwithstanding the provisions of sections 303 and 326 of this Act (sections 703 and 726 of Title 8), any person not a citizen, regardless of age, who has served or hereafter serves honorably in the military or naval forces of the United States during the present war and who, having been lawfully admitted to the United States, including its Territories and possessions, shall have been at the time of his enlistment or induction a resident thereof, may be naturalized upon compliance with all the requirements of the naturalization laws except that (1) no declaration of intention and no period of residence within the United States or any State shall be required; (2) the petition for naturalization may be filed in any court having naturalization jurisdiction regardless of the residence of the petitioner; (3) the petitioner shall not be required to speak the English language, sign his petition in his own handwriting, or meet any education test; and (4) no fee shall be charged or collected for making, filing, or docketing the petition for naturalization, or for the final hearing thereon, or for the certification of naturaliza-

tion, if issued: *Provided, however*, That (1) there shall be included in the petition the affidavits of at least two credible witnesses, citizens of the United States, stating that each such witness personally knows the petitioner to be a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, (2) the service of the petitioner in the petitioner in the military or naval forces of the United States shall be proved by affidavits, forming part of the petition, of at least two citizens of the United States, members or former members during the present war of the military or naval forces of the noncommissioned or warrant officer grade or higher (who may be the witnesses described in clause (1) of this proviso), or by a duly authenticated copy of the record of the executive department having custody of the record of petitioner's service, showing that the petitioner is or was during the present war a member serving honorably in such armed forces, and (3) the petition shall be filed not later than December 31, 1946. The petitioner may be naturalized immediately if prior to the filing of the petition the petitioner and the witnesses required by the foregoing proviso shall have appeared before and been examined by a representative of the Immigration and Naturalization Service.

* * * * *

"Sec. 706. No persons shall be naturalized under the provisions of this title, (sections 1001-1006 of Title 8) unless such person has served in the military or naval forces of the United States prior to the date of enactment of this section (December 28, 1945)." Mar. 27, 1942, 3 p.m. E.W.T., c. 199, Title X, § 1001, 56 Stat. 182; Dec. 28, 1945, c. 590, § 1 (c), 59 Stat. 658.

Section 1491 Judicial Code, 28 USCA 1491.

§ 1491. Claims against United States generally.

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States:

(1) Founded upon the Constitution; or

(2) Founded upon any Act of Congress; or

(3) Founded upon any regulation of an executive department; or

(4) Founded upon any express or implied contract with the United States; or

(5) For liquidated or unliquidated damages in cases not sounding in tort. June 25, 1948, c. 646, 62 Stat. 940.

Section 2502 Judicial Code, 28 USCA 1492.

§ 2502. Aliens' privilege to sue.

Citizens or subjects of any foreign government which accords to citizens of the United States the right to prosecute claims against their government in its courts may sue the United States in the Court of Claims if the subject matter of the suit is otherwise within such court's jurisdiction. June 25, 1948, c. 646, 62 Stat. 976.

APPENDIX B

November 18, 1918.

By The President of the United States of America

A PROCLAMATION

Whereas, by an Act of Congress entitled, "An Act to Authorize the Calling into the Service of the United States, the Militia and Other Locally Created Armed Forces in the Philippine Islands and for Other Purposes," approved by the President on the twenty-sixth of January, one thousand nine hundred and eighteen, it is provided that the militia and other regularly armed forces in the Philippine Islands may be called into said service and organized in such manner as is or may be provided by law for calling or drafting the National Guard into said service, and

Whereas, by an Act of Congress entitled, "An Act for Making Further and More Effectual Provision for the National Defense and Other Purposes," approved the third day of June, one thousand nine hundred and sixteen, it is provided that, "The National Guard, when called as such into the service of the United States shall, from the time they are required by the terms of the call to respond thereto, be subject to the laws and regulations governing the Regular Army."

Now, therefore, I, Woodrow Wilson, President of the United States of America, by authority of the powers conferred upon me by said Acts of Congress, do hereby call into the military service of the United States to serve therein for the period of one month, unless sooner discharged, as of and from the twentieth day of November, one thousand nine hundred and eighteen, the members of one Infantry Division of the Philippine Guard, as organized under the Tables of Organization of the United State Army, approved the third day of May, one thou-

said nine hundred and seventeen, as appears in Table twenty-five thereof, saving and excepting one major general, one regiment of cavalry, one aero squadron, artillery and trains.

All persons hereby called, shall, on and from the twentieth day of November, one thousand nine hundred and eighteen, be subject to the laws and regulations governing the Regular Army.

The officers of said organizations who are called and whose offices are provided for in like organizations of the Regular Army, under Tables of Organization here before referred to, shall continue to exercise command in the grade in which they now hold commissions as officers of said Guard. On and from the twentieth day of November, one thousand nine hundred and eighteen, the non-commissioned officers of said organizations, the members of which are hereby called, shall continue as non-commissioned officers in said organizations in the Federal Service with the same relative rank as heretofore and all other enlisted men in said organizations shall continue in the grades and ratings held by them in the Guard of the Philippine Islands on the twentieth day of November one thousand nine hundred and eighteen, in all cases where such grades and ratings correspond to the grades and ratings provided for in like organizations of the Regular Army as provided in the Tables of Organization herein referred to. These, however, shall be without prejudice to the authority of the duly authorized commanders in respect to promotions and changes in the enlisted personnel.

The several organizations hereby called into the Federal Service will bear the designation which they now hold in the Guard of the Philippine Islands.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed:

Done in the District of Columbia this eighteenth day of November in the year of our Lord one thousand nine hundred and eighteen, and in the Independence of the United States of America, the one hundred and forty-third.

WOODROW WILSON

(SEAL)
By the President:
ROBERT LANSING,
Secretary of State.

Military Order of July 26, 1941

ORGANIZED MILITARY FORCES OF THE GOVERNMENT OF THE COMMONWEALTH OF THE PHILIPPINES CALLED INTO SERVICE OF THE ARMED FORCES OF THE UNITED STATES.

Under and by virtue of the authority vested in me by the Constitution of the United States, by section 2(a)(12) of the Philippine Independence Act of March 24, 1934 (48 Stat. 457), and by the corresponding provision of the Ordinance appended to the Constitution of the Commonwealth of the Philippines, and as Commander-in-Chief of the Army and Navy of the United States, I hereby call and order into the service of the armed forces of the United States for the period of the existing emergency, and place under the command of a General Officer, United States Army, to be designated by the Secretary of War from time to time, all of the organized military forces of the Government of the Commonwealth of the Philippines: *Provided*, that all naval components thereof shall be placed under the command of the Commandant of the Sixteenth Naval District, United States Navy.

This order shall take effect with relation to all units and personnel of the organized military forces of the Government of the Commonwealth of the Philippines, from and after the dates and hours, respectively, indicated in orders to be issued from time to time by the General Officer, United States Army, designated by the Secretary of War.

FRANKLIN D. ROOSEVELT

The White House,
July 26, 1941.

Executive Order 9001

Authorizing the War Department, the Navy Department, and the United States Maritime Commission to Perform the Functions and Exercise the Powers Described in Title II of an Act Approved December 18, 1941, Entitled "An Act to Expedite the Prosecution of the War Effort," and Prescribed Regulations for the Exercise of Such Functions and Powers.

The successful prosecution of the war requires an all-out industrial mobilization of the United States in order that the materials necessary to win the war may be produced in the shortest possible time. To accomplish this objective it is necessary that the Departments of War and the Navy and the United States Maritime Commission cooperate to the fullest possible degree with the Office of Production Management in the endeavor to make available for the production of war material all the industrial resources of the Country. It is expected that in the exercise of the powers hereinafter granted, these Agencies and the Office of Production Management will work together to bring about the conversion of manufacturing industries to war production, including the survey-

ing of the war potential of industries, plant by plant; the spreading of war orders; the conversion of facilities; the assurance of efficient and speedy production; the development and use of subcontracting to the fullest extent and the conservation of strategic materials.

TITLE I

1. By virtue of the authority in me vested by the Act of Congress, entitled "An Act to expedite the prosecution of the War effort," approved December 18, 1941, (hereinafter called "the Act") and as President of the United States and Commander-in-Chief of the Army and Navy of the United States, and deeming that such action will facilitate the prosecution of the war, I do hereby order that the War Department, the Navy Department, and the United States Maritime Commission be and they hereby respectively are authorized within the limits of the amounts appropriated therefor to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made, and to make advance, progress, and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts. The authority herein conferred may be exercised by the Secretary of War, the Secretary of the Navy, or the United States Maritime Commission respectively or in their discretion and by the direction respectively may also be exercised through any other officer or officers or civilian officials of the war or the Navy Departments or the United States Maritime Commission. The Secretary of War, the Secretary of the Navy, or the United States Maritime Commission may confer upon any officer or officers of their respective departments, or civilian officials thereof, the power to make further delegations of such powers within

the War and the Navy Departments, and the United States Maritime Commission.

2. The contracts hereby authorized to be made include agreements of all kinds (whether in the form of letters of intent, purchase orders, or otherwise) for all types and kinds of things and services necessary, appropriate or convenient for the prosecution of war, or for the invention, development, or production of, or research concerning any such things, including but not limited to, aircraft, buildings, vessels, arms, armament, equipment, or supplies of any kind, or any portion thereof, including plans, spare parts and equipment therefor, materials, supplies, facilities, utilities, machinery, machine tools, and any other equipment, without any restriction of any kind, either as to type, character, location or form.

3. The War Department, the Navy Department, and the United States Maritime Commission may by agreement modify or amend or settle claims under contracts heretofore or hereafter made, may make advance, progress, and other payments upon such contracts of any percentum of the contract price, and may enter into agreements with contractors and/or obligors, modifying or releasing accrued obligations of any sort, including accrued liquidating damages or liability under surety or other bonds, whenever, in the judgment of the War Department, the Navy Department, or the United States Maritime Commission respectively the prosecution of the war is thereby facilitated. Amendments and modifications of contracts may be with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished hereunder, irrespective of the time or circumstances of the making of or the form of the contract amended or modified, or of the amending or modifying contract and irrespective of

rights which may have accrued under the contract, or the amendments or modifications thereof.

4. Advertising, competitive bidding, and bid, payment, performance, or other bonds or other forms of security, need not be required.

TITLE II

Pursuant to Title II of the Act and for the protection of the interests of the United States, I do hereby prescribe the following regulations for the exercise of the authority herein conferred upon the War Department, the Navy Department, and the United States Maritime Commission.

1. All contracts and all purchases made pursuant to the Act and this Executive Order shall be reported to the President of the United States. Such reports shall be made at least quarter-annually, provided, however, that purchases or contracts of less than $100,000 may be consolidated in such reports with other such purchases and need not be separately set forth. In case the War Department, the Navy Department, or the United States Maritime Commission shall deem any purchase or contract to be restricted, confidential, or secret in its nature by reason of its subject matter, or for other reasons affecting the public interest, such purchases or contracts shall not be included with those described in the report just mentioned, but shall be included in a separate report containing such restricted, confidential, or secret purchases or contracts. The Secretary of War, the Secretary of the Navy, and the United States Maritime Commission shall make public so much of such reports (other than those reports covering restricted, confidential, or secret contracts or purchases) as they shall respectively deem to be compatible with the public interest.

2. Notwithstanding anything in the Act or this Executive Order the War Department, the Navy Department, and the United States Maritime Commission shall not discriminate in any act performed thereunder against any person on the ground of race, creed, color or national origin, and all contracts shall be deemed to incorporate by reference a provision that the contractor and any subcontractors thereunder shall not so discriminate.

3. No claim against the United States arising under any purchase or contract made under the authority of the Act shall be assigned except in accordance with the Assignment of Claims Act, 1940 (Public No. 811, 76th Congress, approved October 9, 1940).

4. Advance payments shall be made hereunder only after careful scrutiny to determine that such payments will promote the national interest and under such regulations to that end as the Secretary of War, the Secretary of the Navy, or the United States Maritime Commission may prescribe.

5. Every contract entered into pursuant to this order shall contain a warranty by the contractor in substantially the following terms:

"The contractor warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business."

6. Nothing herein shall be construed to authorize the cost-plus-a-percentage-of-cost system of contracting.

7. Nothing herein shall be construed to authorize any contracts in violation of existing law relating to limitation of profits, or the payment of a fee in excess of such limitation as may be specifically set forth in the act appropriating the funds obligated by a contract. In the absence of such limitation, the fixed fee to be paid the Contractor as a result of any cost-plus-a-fixed-fee contract entered into under the authority of this Order shall not exceed seven per centum of the estimated cost of the contract (exclusive of the fee as determined by the Secretary of War, the Secretary of the Navy, or the United States Maritime Commission, as the case may be).

8. No contract or modification or amendment thereof shall be exempt from the provisions of the Walsh-Healey Act (49 Stat. 2036) because of being entered into without advertising or competitive bidding, and the provisions of such act, the Davis-Bacon Act, as amended (49 Stat. 1011), the Copeland Act, as amended (48 Stat. 948), and the Eight Hour Law, as amended by the Act of September 9, 1940 (Public No. 781, 76th Congress), if otherwise applicable shall apply to contracts made and performed under the authority of this Order.

FRANKLIN D. ROOSEVELT

The White House
December 27, 1941.

Military Order:

ORGANIZED MILITARY FORCES OF THE GOVERNMENT OF THE COMMONWEALTH OF THE PHILIPPINES RELEASED FROM THE SERVICE OF THE ARMED FORCES OF THE UNITED STATES.

Under and by virtue of the authority vested in me by the Constitution of the United States, by section 2(a)(12) of the Philippine Independence Act of March 24, 1934 (48 Stat. 457), and by the corresponding provision of the Ordinance appended to the Constitution of the Commonwealth of the Philippines, and as Commander in Chief of the Army and Navy of the United States, I hereby release from the service of the armed forces of the United States all of the organized military forces of the Government of the Commonwealth of the Philippines called and ordered into the service of the armed forces of the United States pursuant to the Military Order of July 26, 1941.

The said Military Order of July 26, 1941, is hereby revoked.

This order shall take effect at 12:00 midnight June 30, 1946.

HARRY S. TRUMAN

The White House,
June 29, 1946.

APPENDIX C

HEADQUARTERS
UNITED STATES ARMY FORCES IN THE FAR EAST
MANILA, P. I.

General Orders
No. 46

18 December, 1941.

1. Pursuant to provisions of the Proclamation of the President of the United States, dated July 26, 1941, all personnel of the Philippine Army on active duty and all active units of the Philippine Army, less personnel and units already accepted for service with the United States Army Forces, are hereby called into the service of the armed forces of the United States in the Philippines, effective on the date of acceptance for the period of the existing emergency, and will be accepted for such service by officers in the service of the United States Army Forces in the Philippines.

2. Personnel of the Philippine Army which may hereafter be called to active duty and units thereof which may hereafter be activated are hereby called into the service of the armed forces of the United States in the Philippines effective on the date of acceptance, and will be accepted for such service by officers in the service of the United States Army Force in the Philippines.

By command of Lieutenant General MacArthur:

R. K. Sutherland,
Brigadier General, G.S.C.
Chief of Staff.

Official:
Carl R. Seals,
Colonel, A. G. D.
Adjutant General.

A True Copy:
s/ William Barr, Jr.
William Barr, Jr.,
Captain, AGD.

APPENDIX D

EMBASSY OF THE PHILIPPINES
WASHINGTON, D. C.

February 15, 1956

Mr. Prew Savoy
203 World Center Building
Washington 6, D. C.

My dear Mr. Savoy:

I have for acknowledgement your letter dated today regarding the claims of certain Filipino citizens against the United States of America on account of requisitions of guerrillas. I am very happy indeed to give you every possible and proper assistance in obtaining a full and final legal determination of the liability of the United States for debts created by reason of the necessary requisitions of the recognized Filipino Guerrillas in World War II. You are well aware that, in the absence of voluntary assumption of such liability by the United States, a final decision by your highest court is generally a condition precedent to diplomatic representations in such matters.

I will answer the three questions contained in your letter of February 15, 1956, *seriatim*. I believe that my statements fairly well represent the opinion of the people of the Philippines on the subject.

(1) The first question I will answer by referring to my speech before the House of Representatives, as Resident Commissioner of the Philippines to the United States, on February 28, 1946, in which I said:

* * * * *

"But there is a legal bond between us that serves

to complement the moral and emotional bond. Our troops fought, not only as Filipino soldiers but as soldiers of the Army of the United States, as American nationals fighting in defense of the American flag on soil over which the United States had full sovereignty. When they fought, were wounded, were killed, they were Filipinos, yes, but they were also American nationals."

The attack by the Imperial Japanese Government was an attack not on the Filipinos as such but on the United States, against Americans on American soil.

When the Philippine Army was "called into the service of the Armed Forces of the United States" by Military Order of the President of the United States and received its orders from General MacArthur, every single soldier while defending his native soil felt that he was defending the American flag—the United States of America—as well as did any soldier from the mainland.

(2) Notwithstanding the fall of Corregidor and the official surrender of the Armies of Japan, many heroic bands of guerrillas took to the hills to harass the enemy, refusing to surrender. History has recorded their valiant efforts and achievements to the great benefit of the United States, necessary to the reoccupation of the Philippines by the armed forces of the United States. These guerrillas were given full recognition by President Osmena and General MacArthur on the latter's return to the Philippines. Their leaders had sworn allegiance to the United States and their men had, in turn, been so sworn by them. To survive the ordeals of this uphill fight, the guerrillas needed food and all manner of supplies, which they requisitioned. Receipts were given, and in every case of which I have knowledge the requisitioning officer unqualifiedly promised that the United

States Army would pay upon its return to the Philippines.

The suppliers believed and, in my opinion, had every right to believe, that they were supplying guerrilla units of the American Army in defense of the United States and would be paid by the United States Army.

(3) Many thousands of such claims were filed before the Army Claims Service established for the payment of claims against the United States Army. Thousands of claims were allowed and paid. However, many thousands of claims were filed as the Army Claims Service was terminating its work and returning to the United States and were summarily dismissed. Thousands were filed too late and there are many who never filed because there was no one left with whom to file. Considering the number of islands comprising the Philippines, this is understoodable.

We are now concerned with those who did file claims which for one reason or another were dismissed and who have sought a review by the Court of Claims, or who failed so to file because of the first decision in *Isidro Victorio* in 1950, which held that there was no liability on the part of the United States.

These people strongly feel, rightly or wrongly, that they have suffered an injustice at the hands of the United States Army. They feel that they supplied the United States Army, were promised payment, and that the United States Army left the Philippines without giving them a full opportunity to present their claims and without paying its obligations. Among them, their friends and families, which are indeed numerous, this cannot help but create an ill feeling toward the United States which we all hope can be avoided. There are bound to be enough problems between our two countries without having one so based.

They feel that the Court of Claims has done them a great wrong because their claims have never been heard on the merits. They cannot believe that these were not debts of the United States and they hope that your Supreme Court will decide otherwise.

Even if they now must turn to their Government for assistance and there, by reason of agreement between the two Governments are eventually paid, they will feel that the United States Army and its Courts did not meet their responsibility. I feel that the elements which from time to time will seek to estrange Filipinos from the United States should not be augmented by disillusioning and embittering those who so loyally came to the assistance of the Guerrilla units of the United States Army. For this reason, I consider the matter of national importance and possibly of eventual international importance to the United States.

I fervently hope that—as a good and devoted friend of the United States—I can preserve the feeling of love and of comradeship of the Filipino people for the United States which existed before and during World War II, and the deep appreciation which they still have for the United States for helping them achieve their independence in accordance with its promises.

Sincerely yours,

CARLOS P. RAMULO

APPENDIX E

GENERAL HEADQUARTERS
FAR EAST COMMAND
APO 500
3 January 1947

AG 370.64 (3 Jan 47)JA

Subject: Claims Arising Out of Guerilla Activities.

To: Commanding General, Philippines-Ryukyus Command, APO 707

1. The instructions for the payment of claims arising out of guerrilla activities contained in the basic letter, 23 October 1946, AG 370.74 (23 October 46)JA, subject: "Claims Arising Out of Guerrilla Activities," this headquarters to the Commanding General, AFWESPAC, are superseded by the following:

2. By authority of the 1st War Power Act of 1941 and Executive Order 9001, and under the provisions of circular 53, W. D. 1946, the payment of certain claims arising out of the activities of recognized guerrilla units in the Philippines is authorized. Payments will be limited to claims for the value of:

a. equipment.
b. supplies
c. services of civilians
d. use and occupation of land not in connection with actual combat operations.

3. Such claims will be paid:

a. Where the claim arose between the original date of recognition of the guerilla unit and the date of the termination of the recognition, or the deactivation thereof:

b. Where definite proof establishes that the obligation was not intended as a patriotic donation to the common cause against the enemy, but was furnished with the agreement that payment would be made therefor;

c. Where the obligation incurred was necessary for the conduct of operations against the enemy.

4. Such claims will be paid from the appropriation "expenses, Army of the Philippines."

5. The dates of the beginning of the recognition of guerrilla forces and units, and the dates of the termination of the recognition, or the deactivation of the guerrilla forces and units, will be established by the Commanding General PHILRYCOM.

By Command of General MacArthur:

s/ J. M. Ebbit
Captain, AGD
Asst Adj Gen

APPENDIX F

DEPARTMENT OF THE ARMY
OFFICE OF THE ADJUTANT GENERAL
ARMY RECORDS CENTER
ST. LOUIS 14, MISSOURI

In reply
Refer to
AGAR-R
(28 May 57)

6 June 1957

Mr. George A. Nugent
Nugent & Nugent
Investment Building
Washington 5, D. C.

Dear Mr. Nugent:

I refer to your letter dated 28 May 1957 concerning the recognition of the Guerilla forces of Captain Walter Cushing.

Upon receiving his commission after the outbreak of World War II, Captain Walter M. Cushing served with the 121st Infantry (Philippine Army). Effective 8 April 1942, this organization was an authorized unit of the Philippine Army in the service of the United States Forces in the Philippines.

For the period subsequent to 9 May 1942, the 121st Infantry (Philippine Army) was recognized as an authorized guerrilla element of the Philippine Army in the service of the Armed Forces of the United States. In order for a member of the 121st Infantry (Philippine Army) organization to have guerrilla recognition subsequent to 9 May 1942, it is necessary for the person's name to appear on an approved guerrilla roster. However,

since Captain Cushing was an officer of the United State
Army, it is not a requirement for his name to appear o
an approved guerrilla roster.

Sincerely yours

(sgd) DAVID H. ARP

DAVID H. ARP
Colonel, AGC
Commanding.

APPENDIX G

HQ-CUSHING REGIMENT, USFIP-NL.
(CUSHING GUERRILLAS)

In The Field
June 15, 1944

Official Receipt:

1. Received from Dr. LEON O. MANZANILLO of Baguio, Philippines, the sum of Fifty Thousand Pesos (P50,000-.00), Philippine Currency, and Two Hundred Thousand Pesos (P200,000.00), Japanese Currency.

2. The above amount is necessary for the maintenance of the CUSHING GUERRILLAS operating against the Japanese Imperial Forces in North Luzon.

3. It is hereby agreed that the above sum shall be paid or reimbursed by the United States Government to Dr. Leon O. Manzanillo at just and reasonable price upon the termination of the War in the Philippines.

Isidoro Aberin
Colonel, Inf. PA, USFIP
Commanding.

Pesos 50,000.00—PC
200,000.00—JC

APPENDIX H

HQ-CUSHING REGIMENT USFIP
(CUSHING GUERRILLAS)

In The Field
October 1, 1944

Official Receipt:

1. Received from Dr. LEON O. MANZANILLO of Baguio, Philippines, the sum of Forty-five Thousand Pesos (P45,000.00), Philippine Currency, and Five Hundred Thousand Pesos (P500,000.00), Japanese Currency.

2. The above amount is necessary for the maintenance of anti-Japanese activities of CUSHING GUERRILLAS operating in North Luzon.

Isidoro Aberin
Colonel, Inf. (PA) USFIP
Commanding.

Pesos 45,000.00—PC
500,000.00—JC

No. 275

In the Supreme Court of the United States

October Term, 1957

LEON O. MANZANILLO, PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Claims

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,

GEO. S. LEONARD,
Acting Assistant Attorney General,

MELVIN RICHTER,
WILLIAM W. ROSS,
Attorneys,
Department of Justice,
Washington 25, D. C.

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In the Supreme Court of the United States

October Term, 1957

No. 275

LEON O. MANZANILLO, PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Claims

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The order of the Court of Claims dismissing the complaint (App. A., *infra*, p. 11) is not reported.

JURISDICTION

The judgment of the Court of Claims was entered on February 15, 1957. By order of the Chief Justice, dated May 10, 1957, the time for filing a petition for a writ of certiorari was extended to and including July 15, 1957. The petition for a writ of certio-

rari was filed on July 15, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether the United States can be held liable for amounts allegedly lent by a Filipino civilian to a Filipino guerrilla unit during the Japanese occupation of the Philippines, where the purported guerrilla unit was never a part of the United States Army and was never recognized as a bona fide irregular element of the Philippine Army.

STATEMENT

This is an action in the Court of Claims seeking to obtain from the United States the amount of cash allegedly advanced by petitioner to Filipino guerrillas during the Japanese occupation of the Philippines in World War II. The court below dismissed the complaint for failure to state a claim upon which relief could be granted and as barred, in part, by limitation. The allegations of the amended petition in the Court of Claims [1] may be summarized as follows:

When the Philippine Army had been ordered into the service of the Armed Forces of the United States in the Far East (USAFFE) by military order of the

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[1] Despite petitioner's statement that his petition was filed on May 5, 1950 (Pet. 6), it appears that his petition in the Court of Claims was filed on November 30, 1949. The Government filed a general denial on January 9, 1950 (R. 1). An amended petition was filed September 8, 1955, and the Government filed a motion to dismiss on October 7, 1955 (R. 25-29). The amended petition was dismissed by an order entered February 15, 1957 (App. A, *infra*, p. 11).

President in 1941 (R. 4), "various duly authorized officers" requisitioned supplies "in order successfully to prosecute military operations against the Enemy * * * with the express or implied authority of the Commander-in-Chief of USAFFE" (R. 5). One such officer, Lt. Col. Isidoro Aberin, Inf. (PA) USFIP, had been "inducted into the USAFFE under authority of Col. John P. Horan, commanding the 43rd Inf. (PS) USAFFE", and on September 29, 1942 "assumed command of all Cushing Guerrillas, known as Cushing Regiment, USFIP" (R. 5-6).

It was alleged that on six different occasions between July 28, 1943, and October 1, 1944, petitioner made cash loans to Aberin, totaling ₱335,000 in Philippine pesos and ₱2,250,000 in Japanese occupation pesos, with a total monetary equivalent in Philippine pesos of ₱1,168,451.00, or $584,225.50 (U.S.) (R. 7-8). These loans were sought by Aberin "for the purpose of securing necessary ammunition and supplies" (R. 7).[2] The petition did not state that the "Cushing Regiment" was a recognized guerrilla unit of the Philippine Army.

The petition further alleged that "under date of March 30, 1948"[3] petitioner filed a claim for repayment of these loans with the Army Claims Service in

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[2] The amended petition in the Court of Claims contained a second count seeking recovery for alleged procurements of medical supplies by a United States Army officer. This count apparently has been abandoned, since no mention of it is made in the petition for certiorari (R. 9-10).

[3] Petitioner's claim was filed with the Army Claims Service on April 29, 1949.

the Philippines, and was advised on August 10, 1949 that his claim had been disallowed (R. 11-12).[1]

The Government moved, in October 1955, to dismiss for failure to state a claim (R. 25). Following this Court's decision in *Soriano* v. *United States*, 352 U.S. 270, the Court of Claims dismissed the petition as barred, in part, by limitations under *Soriano*, and for failure to state a claim under the Court of Claims'

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[1] It seems impossible to reconcile either the dates or the amounts of the various loan claims presented by petitioner at different times prior to and during this proceeding. The claim presented to the Army Claims Service in April 1949 was based on alleged cash loans totaling ₱110,000.00 (Philippine) and ₱650,000.00 (Japanese) made at unspecified times from July 1942 to December 1943 and additional cash loans totaling ₱225,000.00 (Philippine) and ₱1,600,000.00 (Japanese) made at unspecified times between January 1943 and December 1944, or a grand total of ₱2,585,000.00 in Philippine and Japanese currency. The complaint (R. 7-8) alleges loans in the same amount (₱2,585,000.00 or an equivalent in Philippine pesos of ₱1,168,151.00), but asserts that they were made from July 1943 to October 1944 (not July 1942 to December 1944), and does not break the loans down into two groups.

This confusion is compounded by the petition for certiorari (Pet. i) in which the equivalent value of the loans made from July 1943 to October 1944 is reduced from ₱1,168,151.00 to ₱883,151.00. This would appear to be a combination of a typographical error (₱883,151.00 for ₱833,151.00) and an omission of the claims for loans of Philippine Currency (see the Amended Petition in the Court of Claims, p. 6). But we are unable to give an explanation of the final claim figure of $147,500.00. (Pet. 5) The claimed amount would appear to be either $205,250, treating the last four items as not time-barred, or, on petitioner's theory that only two items are timely (Pet. 5), $60,250,

decision in *Logronio* v. *United States*, 132 C. Cls. 596.*

ARGUMENT

1. Petitioner originally sought to recover from the United States over one half million dollars for currency loans allegedly made by him to a Philippine guerrilla officer during the Japanese occupation of the Philippines. Although he concedes (Pet. 5) that the greater part of his claim is now time-barred under this Court's decision in *Soriano* v. *United States*, 352 U.S. 270, he argues that some of the alleged loans are not barred since suit was filed within six years, and that these advances constitute binding obligations of the United States.

While the petition below alleged that the loans were made to an officer who had been "inducted into the USAFFE" (amended petition below, p. 3) and were to be used for the purpose of obtaining supplies for the "Cushing Regiment," the petition significantly omits any allegation that the "Cushing Regiment" was a recognized guerrilla unit of the Philippine Army (Pet. 3-5). To hold the United States responsible for debts based on Philippine Army procurement, however, petitioner was required at a minimum to allege that the procurement was for a unit which constituted, or had been recognized as, a part of the Philippine Army. Only if this unit was

* Although the Court of Claims' order (App. A, *infra*, p. 11) does not specify in detail the grounds on which the court relied, the order grants the Government's motion to dismiss which was based on *Logronio*, and also refers to this Court's decision in *Soriano*.

part of the recognized Filipino forces serving under United States (USAFFE) command in the Philippines would there be any basis for contending that the United States was liable for its procurement, for it is well settled that the United States can be held liable only on contracts made by its own agents, and a guerrilla band without authorization or official status, even of a retroactive character, clearly could not contract to bind the United States. *United States* v. *North American Transportation & Trading Co.*, 253 U.S. 330; *Sutton* v. *United States*, 256 U.S. 575; *Eastern Extension, Australasia & China Telegraph Co.* v. *United States*, 251 U.S. 355; *United States* v. *McDougall's Administrator*, 121 U.S. 89; *Hodges* v. *United States*, 125 C. Cls. 405; *Caltex (Philippines), Inc.* v. *United States*, 129 C. Cls. 605, certiorari denied, 348 U.S. 926. Since there is no allegation that the "Cushing Regiment" was part of the American Army, or of the Philippine Army serving with American forces in the Philippines, the petition was properly dismissed for failure to state a claim against the United States even if the legal theory advanced by petitioner were otherwise accepted. See *Hodges* v. *United States*, 125 C. Cls. 405.

2. Petitioner's failure to allege in the Court of Claims that his alleged loans were made to a recognized guerrilla unit sharply distinguishes this case from the issue on which certiorari was granted but not reached in *Soriano* v. *United States*, 352 U.S. 270. *Soriano* involved a claim based on alleged requisitions of property by Filipino guerrilla units operating during the Japanese occupation of the

Philippines, which were subsequently recognized as irregular elements of the Philippine Army and therefore as part of United States Armed Forces Far East (USAFFE) which included elements of the Philippine Army operating under American command. The Court of Claims determined that the United States had no direct liability for procurement even for recognized Philippine guerrilla units, and certiorari was granted on that issue. Subsequently, before argument, the Court, on petitioner's motion, requested briefs on the further question of whether the claim was time-barred. The decision sustaining the court below (352 U.S. 270) passed only on the limitations question.

The question, therefore, on which certiorari was granted but not reached in *Soriano* was whether procurement for recognized Philippine Army irregulars, because of their status as members of that Army, created an obligation of the United States. The very foundation of the claim in *Soriano* was the fact that guerrilla unit there involved had been officially recognized as part of the Philippine Army, a fact which the Government conceded. Here, there is no allegation that the "Cushing Regiment" had been recognized as an element of the Philippine Army.[6]

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[6] Although it might seem that we are urging an unduly strict construction of the petition below, we believe that the failure to allege that the guerrilla unit involved was "recognized" was no oversight. Army files indicate that the facts are as follows:

No guerrilla unit referred to as the "Cushing Regiment," has been recognized as part of the Philippine Army either

It follows that this proceeding does not present the question (not reached by the Court in *Soriano*) whether recognized Philippine Army irregulars had authority to bind the United States on procurement contracts.

3. Even assuming that the complaint could be read as stating a claim for procurement by recognized members of the Philippine Army, the United States, in our view, could not be held responsible for recognized Philippine Army procurement which could create a claim only against the Philippine Government, and not against the United States. See the main brief for the United States in *Soriano*, No. 49, October Term, 1956, at pp. 10-54. Without repeating the

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by the Philippine or the United States Governments. The 121st Infantry, USAFIP, NL (referred to in petitioner's Appendix F, Pet. 45), was a recognized guerrilla unit of the Philippine Army commanded by Major Walter Cushing until July 1942 when he turned over his command to Captain William G. Peryam. After Peryam's capture in March 1943, the unit was commanded by Colonel George Barnett until the liberation. Aberin never commanded the 121st Infantry or any other bona fide guerrilla unit, and has not been recognized as a guerrilla officer of the Philippine Army.

The "Cushing Regiment" referred to in the complaint and petition is presumably identical with the "11th Infantry Regiment, Cushing Brigade, Folsom Fil-American Guerrillas" which was denied recognition as a bona fide guerrilla organization in February 1947, on Isidoro Aberin's petition on behalf of this organization. (See letter to Isidoro Aberin, App. B, *infra*, p. 12.)

In the light of our understanding of what the proof would show, we believe that petitioner's failure to allege that the "loans" were for a guerrilla unit recognized as an element of the Philippine Army must be taken at its face value.

detailed argument set out in our *Soriano* brief to which this Court is respectfully referred, we submit that the Court of Claims was correct in dismissing the present complaint on the overriding ground that the United States cannot be held directly responsible for Philippine Army procurement.

4. The question raised is now of no general importance. The present case appears to involve the only active claim for guerrilla procurement not barred by the statute of limitations under the *Soriano* decision.[7]

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[7] Although requesting the Court first to consider the merits, the United States stated in its supplemental brief in *Soriano* (p. 14) that a decision favorable to the Government on either of the grounds raised in that proceeding would be dispositive of all Filipino guerrilla cases then pending in the Court of Claims. This statement was in error in so far as a decision on the statute of limitations failed to dispose of a minor portion of this one case, and a portion of the case of *Osmena* v. *United States*, No. 19127. The petitioner in the *Osmena* case has not communicated with the United States since the petition was filed in January 1950, mail sent to the record address is returned unopened, and the commissioner of the Court of Claims has been unable to locate him through advertisements. In June 1957, the Government moved to dismiss the petition for failure to prosecute.

Although we are hesitant to make another categorical statement, a thorough review indicates no other guerrilla case pending at the time of *Soriano* which is not time-barred. Since the *Soriano* decision, several petitions have been filed in the Court of Claims on behalf of over a hundred individuals on the theory that Filipino guerrillas were a "contracting agency" within the meaning of the Contract Settlement Act (see 41 U.S.C. 103, 117). However, that Act required a contracting agency to be authorized to make contracts pursuant to the First War Powers Act (50 U.S.C.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

GEO. S. LEONARD,
Acting Assistant Attorney General.

MELVIN RICHTER,
WILLIAM W. ROSS,
Attorneys.

AUGUST 1957

App. 611). And in any event, in fixing a terminal date for claims under the Contract Settlement Act (68 Stat. 300) Congress did not waive the statute of limitations. We believe, therefore, that the position is wholly without merit. It is not raised in this case.

APPENDIX A

UNITED STATES COURT OF CLAIMS.

VICTORINO SANTIAGO, ET AL

vs.

THE UNITED STATES

* * * *

No. 49386 [Manzanillo v. United States]

* * * *

CLERK'S OFFICE

Washington, D. C., February 15, 1957

To Attorney of Record and
Assistant Attorney General,
and Commissioner

Sirs:

Please take notice that in the above-entitled cause there has been entered this day on the defendant's motion to dismiss petition, the following order:

ALLOWED; see also Soriano v. U.S., Sup. Ct., decided Jan 14, 1957.

DEFENDANT'S MOTION TO DISMISS PETITION ALLOWED, AND PETITION DISMISSED

Respectfully,

/s/ WILLARD L. HART
Clerk, Court of Claims.

APPENDIX B

LETTER TO ISIDORO ABERIN

HEADQUARTERS
PHILIPPINES-RYUKYUS COMMAND
OFFICE OF THE COMMANDING GENERAL
APO 707

GSCPU 091 PI
4 Feb. 1947

Mr. Isidro [sic] Aberin
Baguio, Mt. Province

Dear Mr. Aberin:

The Commanding General has directed th. you be informed that the 4th Infantry Regiment, Cushing Brigade, Folsom Fil-American Guerrillas, purporting to be a guerrilla organization under your nominal control, is not favorably considered for recognition as an element of the Philippine Army.

A set of general requirements for guerrilla recognition, established by General MacArthur during the liberation of the Philippines, has been used as a guide in considering the record of this unit. After careful investigation and full consideration all available substantiating records and testimony of witnesses having pertinent knowledge, recognition of this guerrilla unit is not deemed to be warranted because of reasons mentioned below:

a. The unit was not maintained satisfactorily in the field in opposition to the enemy.

b. Activities of the unit did not contribute materially to the eventual defeat of the enemy.

c. Sphere of operations and unit strength claimed by the unit were not commensurate with the nature of the terrain, limitation of communication facilities,

and the degree of anti-resistance activities of the Japanese in the area during the period concerned.

d. Unit did not show satisfactory continuity of activity and organization.

It is requested that you comply with the provisions of Executive Order No. 68, by the President of the Philippines, dated 26 September 1945, copy attached.

Sincerely yours,

Certified True Copy:

Signed: Nelson A. Voorhees

Typed: NELSON A. VOORHEES
Major, Infantry.

JOHN R. SPARK—Typed
Maj. AGD
Asst. Adj. Gen.

1 Incl.
Executive Order No. 68

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